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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 KEITH DILLMAN,

No. CIV S-05-0645-WBS-CMK

12 Plaintiff,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 JO ANNE B. BARNHART,  
Commissioner of Social Security,

15 Defendant.  
16 \_\_\_\_\_/

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18 Plaintiff, who is proceeding with retained counsel and in forma pauperis, brings  
19 this action for judicial review of a final decision of the Commissioner of Social Security pursuant  
20 to 42 U.S.C. § 405(g). On May 3, 2005, the court directed plaintiff to submit completed forms  
21 within 30 days for service by the U.S. Marshal without pre-payment of costs. Plaintiff failed to  
22 comply and on September 22, 2005, the court directed plaintiff to show cause in writing within 20  
23 days why this action should not be dismissed for lack of prosecution and failure to comply with  
24 court rules and orders. Plaintiff has not responded to the court's order to show cause.

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1 The court must weigh five factors before imposing the harsh sanction of dismissal.  
 2 See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal  
 3 Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in  
 4 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of  
 5 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;  
 6 and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52,  
 7 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate  
 8 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,  
 9 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where  
 10 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.  
 11 1986). Dismissal has also been held to be an appropriate sanction for failure to follow local rules.  
 12 See Ghazali, 46 F.3d at 53.

13 Having considered these factors, and in light of plaintiff's failure to prosecute and  
 14 respond to the court's September 22, 2005, order to show cause, the court finds that dismissal is  
 15 appropriate.

16 Based on the foregoing, the undersigned recommends that this action be dismissed.

17 These findings and recommendations are submitted to the United States District  
 18 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days  
 19 after being served with these findings and recommendations, any party may file written objections  
 20 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
 21 and Recommendations." Failure to file objections within the specified time may waive the right  
 22 to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 DATED: October 20, 2005.

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 25 **CRAIG M. KELLISON**  
 26 UNITED STATES MAGISTRATE JUDGE

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